

ORIGINAL

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

FILED  
MAR 14 2011  
CLERK'S OFFICE  
DETROIT

Harry O Lutz (Pro SE)  
Paula G. Lutz

Plaintiffs

Case # 2:10-cv-12513  
HON. David M. Larson

-VS-

ONEWEST, as successor in interest to IndyMac Bank, FSB,  
STEWART TITLE,  
THE MORTGAGE EXCHANGE, INC,  
MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC,  
QUICKEN LOANS, INC, A Business Entity,  
TITLE SOURCE, INC, A Business Entity,  
And DOES 1 through 50, inclusive,

Defendants.

AMENDED CIVIL COMPLAINT FOR DAMAGES

1. DECLARATORY RELEIF
2. INJUNCTIVE RELEIF
3. CONTRACTUAL BREACH OF GOOD FAITH FAIR DEALING
4. VIOLATIONS OF TILA
5. VIOLATIONS OF RESPA
6. RECISSION
7. FRAUD
8. UNFAIR AND DECEPTIVE ACTS AND PRACTICES (UDAP)
9. BREACH OF FIDUCIARY DUTY
- 10.UNJUST ENRICHMENT
- 11.UNCONSCIONABILITY
- 12.PREDATORY LENDING
- 13.QUIET TITLE

**INTRODUCTION**

COMES NOW the Plaintiffs HARRY O. LUTZ AND PAULA G. LUTZ (hereinafter referred to collectively as "Plaintiffs"), alleges as follows:

**PARTIES**

1. At all times relevant herein, Plaintiffs were over the age of eighteen and is and were a resident of 45920 Tournament Drive, Northville, MI 48167 (hereinafter referred to as "Subject Property").

2. Plaintiffs purportedly entered into a loan repayment and security agreement on or about, March 15, 2004 with Defendant INDYMAC BANK F.S.B., (hereinafter referred to as "INDYMAC"), which required Plaintiffs to repay a loan of \$750,000.00 to INDYMAC and a second loan of \$79,500.00 from Defendant QUICKEN LOANS INC. (hereinafter referred to as "QUICKEN").

3. The loan program for the first loan consisted of a refinance for \$750,000.00 with cash out. The first loan was an Option ARM with a fixed payment for one year. The indexed the loan is tied to is the 12 month MTA. The Plaintiff had 3 different payment options in regard to the first loan, 1) minimum payment, which causes the principal to increase, 2) Interest Only, which causes the principal balance to stay the same and 3) fully amortized, which causes the principal balance to decrease. The interest rate has a discounted rate or teaser rate of 1.25%. The actual note rate is 4.675% (fully Indexed rate). The margin is 3.450%, which is well above the average rate of 2.25%. This loan has a Negative Amortization where the principal balance will increase for the first 5 years. up to 110% of the Original Loan amount, which is \$825,000.00. The payment can change annually with a maximum or cap rate of 8.950%. It cannot increase or decrease more than 7.50% per year. If

1 the borrower makes the minimum payment of \$2,499.39, which is not enough to pay for the interest  
2 that is due, by \$3,081.55, this will be added to the principal. At the 61st payment the loan will recast  
3 and now the payment will be based on the new Principal amount of \$803,989.36. The borrower's  
4 new payment will be \$6,719.55 for the next 25 years, which is a payment shock, for the payment is  
5 more than twice the amount of the initial payment.  
6

7 4. The loan program with regard to the second loan was done 2 years later and is a  
8 HELOC for \$79,500.00. The second loan has a 10 year draw period. The borrower is then required to  
9 pay the principal balance within the next 20 years. The loans were both purportedly secured by the  
10 Subject Property.  
11

12 5. Plaintiffs are informed and therefore believe that Defendant INDYMAC, a  
13 Business Entity, form unknown, is a corporation, authorized to do business in the State of Michigan.  
14 INDYMAC is the original mortgage lender for the first loan with business addresses of: 155 North  
15 Lake Avenue, Pasadena, CA 91101.  
16

17 6. Plaintiffs are informed and therefore believe that Defendant QUICKEN, a  
18 Business Entity, form unknown, is a corporation, authorized to do business in the State of Michigan.  
19 QUICKEN is the original mortgage lender for the second loan with business addresses of: 20555  
20 Victor Parkway, Livonia, MI 48152. QUICKEN is also the original mortgage broker for the second  
21 loan with a business address of: 27725 Stansbury Blvd., Farmington Hills, MI 48334  
22

23 7. Plaintiffs are informed and therefore believe that Defendant STEWART MICHIGAN  
24 TITLE, (hereinafter referred to as "STEWART"), a Business Entity, form unknown, is, authorized to  
25 do business in the State of Michigan. Plaintiffs are informed and believe that STEWART was the  
26 original title company for the first loan with business address of Agency 26211 Central Park Blvd,  
27 #304, Southfield, MI 48076.  
28

1           8.       Plaintiffs are informed and therefore believe that Defendant TITLE SOURCE, INC.,  
2 (hereinafter referred to as "TITLE SOURCE"), a Business Entity, form unknown, is, authorized to  
3 do business in the State of Michigan. Plaintiffs are informed and believe that TITLE SOURCE was  
4 the original title company for the second loan with business address of 20555 Victor Parkway,  
5 Livonia, MI 48152.  
6

7           9.       Plaintiffs are informed and therefore believe that Defendant THE MORTGAGE  
8 EXCHANGE, INC. (hereinafter referred to as "EXCHANGE"), a Business Entity, form unknown,  
9 is, authorized to do business in the State of Michigan. Plaintiffs are informed and believe that  
10 EXCHANGE was the original mortgage broker for the first loan with business address of One  
11 TransAm Plaza Drive, Suite 550, OakBrook Terrace, IL 60181.  
12

13           10.     Plaintiffs are informed and therefore believe that MORTGAGE ELECTRONIC  
14 REGISTRATION SYSTEMS (hereinafter referred to as "MERS"), is the current mortgage  
15 nominee/beneficiary for the second loan. MERS has a business address of PO Box 2026, Flint, MI  
16 48501-2026.  
17

18           11.     The Defendants (each of them named in paragraphs 1 through 10 above, shall  
19 collectively be referred to as "DEFENDANTS") named herein "all persons unknown", claiming any  
20 legal or equitable right, title estate, lien or interest in the property described in this Complaint  
21 adverse to Plaintiffs' title thereto and as DOES I through 50 (hereinafter referred to as "UNKNOWN  
22 DEFENDANTS") are unknown to Plaintiffs. These unknown Defendants and each of them claim  
23 some right, title, estate, lien or interest in the Subject Property hereinafter described adverse to  
24 Plaintiffs' title and their claims and each of them constitute a cloud on Plaintiffs' title to the Subject  
25 Property. Plaintiffs are informed and therefore believe, and on that basis allege that each fictitiously  
26 named herein as a DOE is responsible for the events happening hereinafter alleged. Plaintiffs will  
27  
28

1 seek leave of the Court to amend this Complaint to allege the true names and capacities of said  
2 fictitiously named Defendant's when ascertained.

3       12. Plaintiffs are informed and therefore believe and on that basis allege that at all times  
4 mentioned herein, the Unknown Defendants are individuals and/or business entities whose forms are  
5 unknown and were agents, principals, employees, employers and co-conspirators of each and every  
6 other named or unnamed Defendant in this Complaint. Plaintiffs are informed and therefore believe  
7 and on that basis allege that each of said Defendants is and at all relevant times herein, was acting  
8 within the scope and consent of the remaining named and unnamed Defendants.  
9

10       13. Whenever in this Complaint an act or omission of a corporation or business entity is  
11 alleged, the allegation shall be deemed to mean and include an allegation that the corporation or  
12 business entity acted or omitted to act through its authorized officers, directors, agents, servants,  
13 and/or employees, acting within the course and scope of their duties, that the act or omission was  
14 authorized by corporate managerial officers or directors, and that the act or omission was ratified by  
15 the officers and directors of the corporation or business entity.  
16

17       14. As a result of their mortgage activities, Defendants and each of them are and were  
18 subject to and must comply with the Federal Truth In Lending Act (hereinafter referred to as  
19 "TILA")[15 U.S.C. §1601-1666j] and with the Act's corresponding Regulation Z (hereinafter  
20 referred to as "RegZ")[24 C.F.R § 3500.1-3500.17]; the Real Estate Settlement Procedures Act  
21 (hereinafter referred to as "RESPA")[12 U.S.C. § 2601 et.seq.]; Federal Trade Commission § 5]; 24  
22 Code of Federal Regulations § 3500.10; and Unfair and Deceptive Business Practices and Acts  
23 [UDAP Statutes].  
24  
25  
26  
27  
28

**JURISDICTION**

15. The transactions and events which are the subject matter of this Complaint all occurred within the County of Wayne, State of Michigan.

16. The Subject Property is located within the County of Wayne, State of Michigan.

**FACTUAL ALLEGATIONS**

17. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though fully set forth herein.

18. For years, mortgage brokers and lenders have been selling loan products that they knew or should have known would never be able to be repaid by the borrower and would prevent borrowers from ever actually owning the home. Instead, borrowers were offered interest-only, negative amortization, and/or other subprime loan products that amounted to no more than a short term lease until the payments became so unaffordable that the borrowers are now faced with either bankruptcy or foreclosure. The housing bubble of the past decade was created by predatory lending practices, such as charging excessive fees, incorporating payment penalties, negative amortization payments, or other abusive terms in the agreements, providing kickbacks to brokers, flipping loans, using balloon payments to conceal the true burden of the financing, requiring unnecessary insurance and other products, including mandatory arbitration clauses, steering borrowers to subprime loans when they qualify for conventional loans, and using bait and switch tactics. All were rampant within the industry without oversight or good judgment and found to be inconsistent with important national objectives, including the goals of fair access to credit, community development, and stable homeownership by the broadest spectrum of America. Rather than offering a loan product that was viable and long-term for the borrower and lender, brokers and lenders greedily sold whatever they

1 could get away with, arguably the primary catalyst for what is now this country's worst economic  
2 crisis since the Great Depression.

3  
4 19. The loan products sold to Plaintiffs in this case was exactly the kind of loan that has  
5 contributed to our national problem. The Defendants were aware of this trend, and possessed the  
6 foresight to advise Plaintiffs of this risk. They intentionally concealed the negative implications of  
7 the loan they were offering, and as a result, Plaintiffs face the potential of losing their home to the  
8 very entity and entities that placed them in this position.

9  
10 20. On or about March 15, 2004 (hereinafter referred to as "Closing Date") Plaintiffs  
11 entered into a consumer credit transaction with INDYMAC by obtaining a \$750,000.00 mortgage  
12 loan allegedly secured by Plaintiff's principal residence, (Subject Property). This note was allegedly  
13 secured by a First Trust Deed on the Property in favor of INDYMAC. Two years later the HELOC  
14 was provided to Plaintiffs from QUICKEN which also purportedly held a Deed of Trust on the  
15 Subject Property in favor of Quicken.

16  
17 21. The terms of the finance transaction with INDYMAC are not clear or conspicuous,  
18 nor consistent, and are illegal, and include, for example, a negative amortization of the loan, an  
19 amount financed based upon a stated income and a credit report ONLY, flawed underwriting  
20 procedures, an understated finance charge and other rates, fees and terms for which INDYMAC  
21 either did not disclose, make clear or had not included as part of the finance charge.

22  
23 22. The second loan (HELOC) was used to pay off short term debt with this loan in the  
24 amount of \$77,032.00. This is Equity Stripping, (paying off short term debt with a long term loan). It  
25 harms the borrower to do this, because of the costs (interest) involved when you pay off a loan in 30  
26 years instead of 10 or less. The appraised value of the home has decrease in the last 2 years from  
27 \$1,000,000.00 to \$940,000.00. The CLTV is now at 88.24%, instead of 75% LTV when the  
28

1 borrowers only had the first loan. When the negative amortization to the payments kick in, the  
2 principal amount increases to the maximum of \$825,000.00, then the CLTV is 96.22%.

3         23. In addition, and unbeknownst to Plaintiffs, INDYMAC and QUICKEN illegally,  
4 deceptively and/or otherwise unjustly, qualified Plaintiffs for a loan which INDYMAC and  
5 QUICKEN knew or should have know that Plaintiffs could not qualify for or afford by, for example,  
6 the loan was approved using only the stated income and applying a standard of the loan the far  
7 exceeded normal underwriting practices. Had INDYMAC and QUICKEN used a more accurate and  
8 appropriate factor, such as considering the Plaintiffs ability to repay the actual principal and interest  
9 for the full term of the loan, Plaintiffs would not have qualified for the loan in the first place.  
10 Consequently, INDYMAC and QUICKEN sold Plaintiffs a loan product that it knew or should have  
11 known would never be able to be fully paid back by Plaintiffs. INDYMAC and QUICKEN ignored  
12 long-standing economic principals of underwriting and instead, knowingly, liberally, greedily and  
13 without any regard for Plaintiffs' rights sold Plaintiffs a deceptive loan product.

14         24. There was no determination of the ability of the Plaintiffs to repay the loan, with  
15 complete disregard for the Guidance Letters issued by Federal Agencies and even Federal and State  
16 Law.

17         25. Defendants, and each of them, neither explained the workings of the entire mortgage  
18 loan transaction, how the rates, finance charges, costs and fees were computed, nor the inherent  
19 volatility of the loan product(s) provided by Defendants.

20         26. The purpose of entering into the above-described mortgage loan transactions was for  
21 Plaintiffs to eventually own the Property. That purpose was knowingly and intentionally thwarted  
22 and indeed made impossible by Defendants' actions alleged herein.



1           27. Each subsequent Defendant who has participated in, been assigned or been transferred  
2 Rights, or holds a position or interest under this loan agreement, including INDYMAC, QUICKEN,  
3 EXCHANGE, STEWART, TITLE SOURCE, MERS, and UNKNOWN DEFENDANTS  
4 (hereinafter referred to collectively as "Defendants") failed to perform their due diligence in  
5 investigation the legal requirements that this loan should have been processed within. As a result,  
6 Defendants now hold an interest in a loan that was improperly handled from its inception.  
7

8           28. A expert, certified, forensic audit of the Plaintiffs' loan documents revealed the  
9 following legal violations which were incurred during the handling and processing of Plaintiffs'  
10 loan:  
11

12           29. Plaintiffs are informed and believe and therefore allege that The Schedule of  
13 Payments from the TILA are misleading to a borrower because the adjustment payment on the TILA  
14 shows only the "possible" fully-indexed rate but does not disclose the "possible" worst case rate  
15 adjustment of 7.7%.  
16

17           30. Plaintiffs are informed and believe and therefore allege that the underwriter approved  
18 this loan based only upon a stated income and a medium to high risk credit score and a belief that the  
19 property would continue to increase in value and that the Plaintiffs should have been declined for  
20 this loan. The DTI (debt to income) ratio for the borrowers at the maximum rate is 55.74%, which  
21 well exceeds normal underwriting standards. It is the fiduciary duty of the lender not to put the  
22 borrowers in harm's way. The approval for this loan is solely based on the low LTV of 75%.  
23

24           31. For the second loan, the borrowers income has decrease in the 2 years since they  
25 refinanced the first. This has caused the ratios to increase considerable. Now the DTI is 72.25% and  
26 that is when the first mortgage payment is \$2,687.00 per month. If the payment increased to the cap  
27  
28

1 or maximum rate, the borrower's monthly payments would total \$9,961.65. Plus the other debts, per  
2 the loan application equals at total of \$15,664.17. Now their DTI is at 109.90%.

3 32. Plaintiffs are informed and believe and therefore allege that that based on a Real  
4 Income Analysis, with the type of take home income Plaintiffs possess and that was clearly disclosed  
5 to Defendants, that the borrower would not be able to support the home payment over an extended  
6 period.  
7

8 33. Plaintiffs are informed and believe and therefore allege that Defendants did not  
9 initially disclose the prepayment penalty and charged excess fees. This loan has a 3 year prepayment  
10 penalty where if the borrower makes a partial of full prepayment of more than 20% of the original  
11 principal amount in any 12 month period, then the borrower will pay a prepayment penalty of 6  
12 months advance interest on the amount prepaid in excess of 20% of the original principal amount.  
13

14 34. Plaintiffs are informed and believe and therefore allege that Defendants did not  
15 disclose the accurate amortization of the loan. For example, the loan documents present a "picture"  
16 of the loan whereby one continuously sees interest rates presented on the loan documents however  
17 nowhere is it mentioned what the actual amortizing payment is given the Option Adjustable Rate.  
18

19 35. Plaintiffs are informed and believe and therefore allege that Defendants breached their  
20 fiduciary duty to Plaintiffs because they knew or should have known that the Plaintiffs will or had a  
21 strong likelihood of defaulting on this loan, Defendants have a fiduciary duty to the borrower to not  
22 place them in that loan (in harms way).  
23

24 36. Plaintiffs are informed and believe and therefore allege that it was in the best interest  
25 of the Defendants to promote the particular program for which they approved the Plaintiffs. It led to  
26 a maximization of profits for the Defendants, with no concern for the Plaintiffs financial position or  
27 livelihood.  
28

1           37.     Plaintiffs are informed and believe and therefore allege that as a result of the practices  
2 of Defendants, and each of them throughout the handling of this loan, that such practices are  
3 consistent with the definition of predatory lending, and encompass numerous characteristics that  
4 indicate such.

5  
6           38.     Plaintiffs are informed and believe and therefore allege that Defendants provided  
7 inadequate disclosure of the true costs, risks and, where necessary, appropriateness to the borrower  
8 of loan transactions in violation of the Federal Trade Commission Act.

9  
10          39.     Plaintiffs are informed and believe and therefore allege that Defendants engaged in  
11 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading  
12 advertising in violation, rising to unfair and deceptive business practices, in violation of California  
13 Business and Professions Code § 17200 and the Unfair and Deceptive Acts and Practices statutes.

14                                   **FIRST CAUSE OF ACTION**

15                                   **Declaratory Relief**

16                                   **(Against All Defendants)**

17  
18          40.     Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
19 fully set forth herein.

20          41.     An actual controversy has arisen and now exists between Plaintiffs and Defendants  
21 regarding their respective rights and duties, in that Plaintiffs contends that Defendants did not have  
22 the right to foreclose on the Subject Property because Defendants' security interest in the Subject  
23 Property has been rendered void by operation of law, pursuant to 24 Code of Federal Regulations  
24 3500.10, the Federal Trade Commission Act, California Business and Professions Code, UDAP,  
25 TILA and RESPA. Thus the purported power of sale by Defendants no longer applies.  
26  
27  
28

1           42.     Plaintiffs further contend that Defendants do not have the right to foreclose on the  
2 Subject Property because Defendants did not properly comply with proper delivery procedures under  
3 RESPA. Plaintiffs further contend that the Defendants perpetrated a fraudulent loan transaction.  
4 Plaintiffs request that this Court find the purported power of sale contained in the Loan of no force  
5 and effect at this time, because Defendants actions in the processing, handling and attempted  
6 foreclosure of this loan has contained numerous violations of State and Federal laws designed to  
7 protect borrowers, which has directly caused Plaintiffs to be at an equitable disadvantage to  
8 Defendants. Plaintiffs further requests that title to the Subject Property remain in Plaintiff's name,  
9 with said Deed of Trust remaining in beneficiaries' name, during the pendency of this litigation, and  
10 deem the any sale of the Subject Property "unlawful and void".  
11

12  
13           43.     As a result of the Defendants' actions, Plaintiffs have suffered damages according to  
14 proof, and seeks declaratory relief that Defendants' purported power of sale is void and has no force  
15 or effect against the Subject Property.  
16

17           44.     Further, Defendants' actions have been willful, knowing and malicious.

18           WHEREFORE, Plaintiffs pray for relief as set forth below.

19                           **SECOND CAUSE OF ACTION**

20                                   **Injunctive Relief**

21   **(Against All Defendants)**

22  
23           45.     Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
24 fully set forth herein.

25           46.     Defendants have commenced (or are planning to commence) a foreclosure action  
26 under the Notes and have scheduled (or will schedule) a non-judicial sale. Said sale will cause  
27 Plaintiffs great and irreparable injury in that real property is unique.  
28



1           52. Defendants enjoyed substantial discretionary power affecting the rights of Plaintiffs  
2 during the events alleged in this Complaint. Defendants were required to exercise such power in  
3 good faith.

4  
5           53. Defendants willfully breached their implied covenant of good faith and fair dealing  
6 with Plaintiffs when Defendants:

7                   I. Willfully withheld numerous disclosures;

8                   II. Willfully withheld notices in regard to Underwriting standards, Prepayment  
9 Penalties, Disclosures of additional income due to interest rate increases, and  
10 failure to disclose when negative credit scores were disseminated;

11                   III. Willfully placed Plaintiffs in a loan that they did not qualify for, could not  
12 afford, and subjected them to further financial detriment, while providing  
13 Defendants with financial benefits they would not have otherwise enjoyed.

14  
15           54. As a result of Defendants' breach of this covenant, Plaintiffs has suffered injury and  
16 has caused Plaintiffs the threat of loss of their home. Plaintiffs have incurred and continue to incur  
17 legal fees, including attorney fees and costs, as well as expenses to right this wrong.

18  
19           55. Defendants' actions in this matter have been willful, knowing, malicious, fraudulent  
20 and oppressive, entitling Plaintiffs to punitive damages in an amount appropriate to punish  
21 Defendants and to deter others from engaging in the same behavior.

22  
23           WHEREFORE, Plaintiffs pray for relief as set forth below.

24                                   **FOURTH CAUSE OF ACTION**

25                                   **Violation of TILA, 15 U.S.C. § 1601, et.seq.**

26                                   **(Against All Defendants)**  
27  
28

1           56. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
2 fully set forth herein.

3           57. Defendants violated TILA by failing to provide Plaintiffs with accurate material  
4 disclosures required under TILA and not taking into account the intent of the State Legislature in  
5 approving this statute which was to fully inform home buyers of the pros and cons of adjustable rate  
6 mortgages in a language (both written and spoken) that they can understand and comprehend; and  
7 advise them to compare similar loan products with other lenders. It also requires the lender to offer  
8 other loan products that might be more advantageous for the borrower under the same qualifying  
9 matrix.  
10

11           58. Any and all statute[s] of limitations relating to disclosures and notices required  
12 pursuant to 15 U.S.C. § 1601, et.seq. were tolled due to Defendants' failure to effectively provide the  
13 required disclosures and notices.  
14

15           59. An actual controversy now exists between Plaintiffs, who contend they have the right  
16 to rescind the loan on the Subject Property alleged in this Complaint, and based on information and  
17 belief, Defendants deny that right.  
18

19           60. As a direct and proximate result of Defendants' violations Plaintiffs have incurred and  
20 continues to incur damages in an amount according to proof but not yet ascertained including  
21 without limitation, statutory damages and all amounts paid or to be paid in connection with the  
22 transaction.  
23

24           61. Defendants were unjustly enriched at the expense of Plaintiffs who is therefore  
25 entitled to equitable restitution and disgorgement of profits obtained by Defendants.  
26  
27  
28

### FIFTH CAUSE OF ACTION

**(Against All Defendants)**

64. The loan to Plaintiffs was a federally-regulated mortgage loan as defined in RESPA.

(1) Whether goods or facilities were actually furnished or services were actually performed for the compensation paid and;

In applying this test, HUD believes that total compensation should be scrutinized to assure that it is reasonably related to the goods, facilities, or services furnished or performed to determine whether it is legal under RESPA.

66. Here, QUICKEN and EXCHANGE were paid unearned fees, which were hidden from Plaintiffs created a windfall for INDYMAC and QUICKEN, the extent resulting in Defendants receiving a windfall of “buy back fees” over the life of the loan.



1           67.     The broker was paid 2.56% of the loan amount in fees. This loan required the  
2 borrower to pay interest rates, fees and/or charges not justified by marketplace economics in place at  
3 the time the lien was originated. EXCHANGE received a Mortgage Broker Compensation of  
4 \$18,750.00 from INDYMAC. To earn a Mortgage Broker Compensation EXCHANGE will increase  
5 the interest rate that the borrower will pay. It takes a borrower about three years to repay the  
6 Mortgage Broker Compensation. Once the three year repayment period has ended, the interest rate  
7 does not drop. Instead, the borrower continues to pay at the same interest rate and the lender reaps  
8 the benefits of the higher payment. Mortgage Broker Compensation significantly affects the  
9 borrower's payment and financial situation. Absent the presence of a separate fee agreement  
10 regarding Mortgage Broker Compensation and that the borrower agreed to pay such an excessive  
11 amount to the broker, and in evaluating the Mortgage Broker Compensation using the HUD 2 part  
12 test, EXCHANGE and the lender have enjoyed the benefits of Unjust Enrichment as well as  
13 unearned fees under RESPA. 12 CFR sec. 226.4(a), 226.17, and 18(d) and (c) (1) (iii) Under the  
14 EOCA, a borrower is entitled to the same terms of credit issuance that another borrower of equal  
15 characteristics is entitled to. INDYMAC placed borrower into a loan that had a significantly higher  
16 interest rate than what was qualified for. This was a result of paying a Mortgage Broker  
17 Compensation to the broker (which benefited the lender).

21           68.     No separate fee agreements that the broker and the lender have enjoyed were ever  
22 provided, resulting in the benefits of Unjust Enrichment for IUNDYMAC and QUCIKEN.

24           69.     Defendants violated RESPA because the payments to the mortgage broker and to the  
25 lender were misleading and designed to create a windfall. These actions were deceptive, fraudulent  
26 and self serving.

6 SIXTH CAUSE OF ACTION

8 (Against All Defendants)

72. Plaintiffs are entitled to rescind the loan for all of the foregoing reasons: 1) TILA  
Violations; 2) RESPA Violations; 3) Fraudulent Concealment; and 4) Public Policy Grounds, each of  
which provides independent grounds for relief.

74. The public interest would be prejudiced by permitting the alleged contract to stand:  
such action would regard an unscrupulous lender.

amount not yet ascertained, to be proven at trial.

1 WHEREFORE, Plaintiffs pray for rescission of the stated loan in its entirety.

2 **SEVENTH CAUSE OF ACTION**

3 **Fraud**

4 **(Against All Defendants)**

5  
6 76. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
7 fully set forth herein.

8 77. Defendants intentionally, willfully and wantonly engaged in the acts with the purpose  
9 of deceiving Plaintiffs and inducing them to part with their personal and real property buy using a  
10 stated income loan.

11  
12 78. The credit application and or available W-2's provided by Plaintiffs was enough, in  
13 addition to the application itself for Defendants to know what type of loan should be offered, and  
14 what the Plaintiffs could not afford. Any falsification of a credit application by a broker or seller for  
15 the purposes of securing a loan is de facto fraud. U.S. v. Robinson, 4<sup>th</sup> Circuit, 2004.

16  
17 79. Defendants engaged in the unlawful suppression of facts or circumstances by one of  
18 the parties to a contract from the other, for self-serving purposes and financial gain, which in justice  
19 ought to be made known. These include the following acts:

20 80. Prepayment Penalty. This loan has a 3 year prepayment penalty where if the borrower  
21 makes a partial of full prepayment of more than 20% of the original principal amount in any 12  
22 month period, then the borrower will pay a prepayment penalty of 6 months advance interest on the  
23 amount prepaid in excess of 20% of the original principal amount.

24  
25 81. Discounted Rate. The borrower is qualified and makes his payments based on a  
26 "discounted rate" not the fully-indexed rate based on the index and margin. In section 3G of the  
27 Note it states that the note holder will determine the amount of the monthly payment that would be  
28

1 sufficient to repay the unpaid principal before the maturity date. Which means that the payment  
2 could be higher than the fully indexed rate if there is a deficit at the end of the 60 month fixed  
3 period.

4  
5 82. Excessive Loan/ Closing Fees/High Broker Compensation. The broker was paid  
6 2.56% of the loan amount in fees. This loan required the borrower to pay interest rates, fees and/or  
7 charges not justified by marketplace economics in place at the time the lien was originated.

8  
9 83. Mortgage Broker Compensation. The broker received a Mortgage Broker  
10 Compensation of \$18,750.00 from INDYMAC. To earn a Mortgage Broker Compensation the  
11 broker will increase the interest rate that the borrower will pay. It takes a borrower about three years  
12 to repay the Mortgage Broker Compensation. Once the three year repayment period has ended, the  
13 interest rate does not drop. Instead, the borrower continues to pay at the same interest rate and the  
14 lender reaps the benefits of the higher payment. Mortgage Broker Compensation significantly affects  
15 the borrower's payment and financial situation. Absent the presence of a separate fee agreement  
16 regarding Mortgage Broker Compensation and that the borrower agreed to pay such an excessive  
17 amount to the broker, and in evaluating the Mortgage Broker Compensation using the HUD 2 part  
18 test, it is the contention of the auditor that the broker and the lender have enjoyed the benefits of  
19 Unjust Enrichment as well as unearned fees under RESPA. 12 CFR sec. 226.4(a), 226.17, and 18(d)  
20 and (c) (1) (iii) Under the EOCA, a borrower is entitled to the same terms of credit issuance that  
21 another borrower of equal characteristics is entitled to. The lender placed borrower into a loan that  
22 had a significantly higher interest rate than what was qualified for. This was a result of paying a  
23 Mortgage Broker Compensation to the broker (which benefited the lender).

24  
25  
26 84. Equity Stripping. The borrower paid off unsecured debt with this loan for the total  
27  
28

1 amount of \$58,397.00. This made the short term debt now become long term. This will cause undo  
2 harm to the borrowers for those debts have now cost them more because the term has now gone to 30  
3 years.

4  
5 85. Plaintiffs justifiably relied on Defendant's deception, which was the actual and  
6 proximate cause of Plaintiffs' damages.

7  
8 86. Plaintiffs are entitled to exemplary and punitive damages for Defendants' fraudulent  
9 conduct in the sum to be determined at trial. Further, fraudulent concealment avoids the contract.

10 WHEREFORE, Plaintiffs pray for relief as set forth below.

11 **EIGHTH CAUSE OF ACTION**

12 **Unfair And Deceptive Business Act Practices (UDAP)**

13 **(Against All Defendants)**

14  
15 87. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
16 fully set forth herein.

17  
18 88. Defendants failed to undergo a diligent underwriting process for this loan a alleged in  
19 this complaint. They also failed to properly adjust and disclose facts and circumstances relating to  
20 Plaintiffs' Adjustable Rate Mortgage and placed Plaintiffs in a loan, by way of stated income and  
21 misleading facts, which they should never have been approved for because they could not afford it.  
22 Defendants did have that knowledge of these facts, circumstances and risks but failed to disclose  
23 them.

24  
25 89. Defendants failed to determine the ability of the Plaintiffs to repay the loan. Further,  
26 the initial disclosures to Plaintiffs quoted a different rate and a loan without a prepayment penalty.  
27 The disclosures also failed to note that the quoted 1.5% rate was a variable rate loan. By reason of  
28 Defendants fraudulent, deceptive, unfair, and other wrongful conduct as herein alleged, said

1 Defendants have violated Unfair and Deceptive Acts and Practices statutes by consummating an  
2 unlawful, unfair, and fraudulent business practice, designed to deprive Plaintiffs of their home.  
3 equity, as well as their past and future investment.

4  
5 90. By reason of the foregoing, Plaintiffs have suffered and continue to suffer damages in  
6 a sum which is, as yet unascertained.

7 WHEREFORE, Plaintiffs pray for relief as set forth below.

8 **NINTH CAUSE OF ACTION**

9 **Breach of Fiduciary Duty**

10 **(Against Defendants)**

11  
12 91. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
13 fully set forth herein.

14 92. Defendants owed a fiduciary duty to Plaintiffs and breached that duty by failing to  
15 advise or notify Plaintiffs when Defendant's broker knew or should have known that Plaintiffs will  
16 or has a likelihood of defaulting on the loan, Defendants have a fiduciary duty to the borrower to not  
17 place them in that loan (in harms way).

18  
19 93. Regarding this loan, it was in the best interest of the Defendants to promote the  
20 particular program for which they approved the Plaintiffs. It led to a maximization of profits for the  
21 Defendants, with no concern for the borrower. A 30-year fixed would have netted less return for the  
22 lender, though better for the borrower.

23  
24 94. Defendant failed to provide material disclosures regarding the loan and its interest  
25 rate to Plaintiffs while in the capacity of Plaintiff's Lender.

26  
27 95. Defendants failed to fully comply with TILA/RESPA regulations and laws designated  
28 to protect Plaintiffs. The failure to do so placed Plaintiffs in a serious disadvantage and potential

1 loss of their home. Such actions are violations of a fiduciary responsibility owed to Plaintiffs by  
2 Defendants.

3 WHEREFORE, Plaintiffs pray for relief as set forth below.

4 **TENTH CAUSE OF ACTION**

5 **Unjust Enrichment**

6 **(Against All Defendants)**

7  
8 96. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
9 fully set forth herein.

10  
11 97. Defendants provided the Plaintiffs with an agreement to repay a loan that had an  
12 adjustable interest rate and called for compensation to Defendants for the life of the loan, which was  
13 worth value to Defendants.

14  
15 98. Plaintiffs likewise expected in return, fair and truthful dealings, disclosures and  
16 practices by Defendants while providing value to Defendants.

17  
18 99. Defendants acknowledged, accepted, and benefited from the Plaintiffs' agreement to  
19 enter into the loan.

20  
21 100. A forced sale of the Plaintiffs' home, and an allowance for Defendant's to recoup the  
22 extreme profits enjoyed by forcing Plaintiffs into an imbalance of principal to interest ratio, would be  
23 inequitable and unconscionable, while the Defendants enjoy the benefit of the Plaintiffs' actions  
24 without paying for their own breaches of the law and professional responsibilities.

25 WHEREFORE, Plaintiffs pray for restitution and relief as set forth below.

26 **ELEVENTH CAUSE OF ACTION**

27 **Unconscionability – UCC-2-3202**

28 **(Against All Defendants)**





109. The loan does not plainly and prominently disclose on the good faith estimate of closing costs the size of any yield spread premium paid directly or indirectly, in whole or in part, to a mortgage loan officer; it consisted of excessive fees and rates; it required Plaintiffs to pay interest rates, fees and charges that were/are not justified by the marketplace; it included a debt ratio without determining the true ability of Plaintiffs to repay the loan; it was approved with the borrower having little or no equity in the home causing the borrower to be unable to refinance when the rate inevitably adjusts; and it was a inter-temporal transaction on which Plaintiffs had only qualified at the initial teaser rate and could not qualify for the loan once interest rate changed; it was based on loan applications that were inappropriate for the Plaintiffs.

WHEREFORE, Plaintiffs pray for relief as set forth below.

## Quite Title

**(All Defendants Claiming Any Interest In the Subject Property)**

1           110. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
2 fully set forth herein.

3           111. Plaintiffs is at all times herein mentioned the owner and/or entitled to possession of  
4 the Property, until the date of sale that transferred physical possession of the deed of trust to the non-  
5 bonafide subsequent purchaser...

6  
7           112. Plaintiffs are informed and therefore believes and thereupon alleges that Defendants,  
8 and each of them, claim an interest in the Subject Property adverse to Plaintiffs. However, as a result  
9 of the conduct more fully described in the preceding allegations, the claim of Defendants is without  
10 any right whatsoever, and said Defendants have no legal or equitable right, claim, or interest in the  
11 Property.  
12

13           113. Plaintiffs therefore seek a declaration that the title to the Subject Property is vested in  
14 Plaintiff's alone and that the Defendants herein, and each of them, be declared to have no estate,  
15 right, title or interest in the Subject Property and that said Defendants, and each of them, be forever  
16 enjoined from asserting any estate, right, title or interest in the Subject Property adverse to Plaintiffs.  
17

18           WHEREFORE, Plaintiff prays for relief as set forth below.

19  
20                           **PRAYER FOR RELIEF**

21           WHEREFORE Plaintiffs will ask for the following for each Cause of Action sustained:

- 22           1. For Compensatory Damages in an amount to be determined by proof at trial.  
23           2. For Special Damages in an amount to be determined by proof at trial.  
24           3. For General Damages in an amount to be determined by proof at trial.  
25           4. For Treble Damages in an amount to be determined by proof at trial.  
26           5. For Punitive Damages as against the individual Defendants.  
27           6. For Attorney's Fees and Costs of this action.  
28

7. For Declaratory Relief, including a declaration that Plaintiffs is the prevailing party.
8. For Injunctive Relief;
9. For a judgment rescinding the Loan and Security Agreement and setting forth terms of restitution.
10. For any prejudgment or other interest according to law.
11. Any other and further relief that the Court considers just and proper.

March \_\_, 2010

\_\_\_\_\_  
[Attorney for Plaintiff]

*14-MAR-2011*

*Harry Lutz*